control. *Held,* (1) that such provision applied only in case of the bankrupt's death, (2) that if applied to a wife's inchoate right of dower the provision would be unconstitutional, and (3) that the principle of allowing the lex situs to control the admeasurement of dower was not a violation of the constitutional provision requiring Bankruptcy Acts to be uniform throughout the United States. *Thomas* v. *Woods et al.* (1909), — C. C. A., 8th Cir. —, 173 Fed. 585.

The first holding seems reasonably clear from the language of the section, but the constitutional question suggested is more difficult. It has long been held that the constitutional requirement that Bankruptcy Acts shall be uniform does not affect the admeasurement of dower. *Darling* v. *Berry,* 13 Fed. 659, nor the bankrupt's exemptions where Congress has not legislated upon the subject. *Hanover National Bank* v. *Moyses,* 186 U. S. 181, *22* Sup. Ct. 857, 46 L. Ed. 1113. And it is equally well settled that the right to dower is determined by the lex situs. *Jennings* v. *Jennings, 21* Oh. St. 56, *Atkinson* v. *Staigg,* 13 R. I. 725. The power of Congress to make a different rule apply is exceedingly doubtful. A wife's right to dower, even though inchoate, is none the less her property, and forms no part of the bankrupt's estate. The right to control its admeasurement seems, therefore, not a necessary part of a Bankruptcy Act, and hence not within the power of Congress.

BANKRUPTCY—MECHANIC'S LIEN—SET-OFF.—A building contractor had contracted to put up a building upon certain realty, but became bankrupt before the building was paid for by the owner. After the contractor had been adjudged a bankrupt, the owner paid certain sub-contractors the amount of their claims against the principal contractor in order to discharge a mechanic's lien against the property, created by the statutes of Pennsylvania. In a suit by the bankrupt's trustee against the owner for the contract price of the building the defendant sought to have these claims set off against the plaintiff's demand, under Bankruptcy Act July 1, 1898, c. 541, § 68, 30 Stat. 565 (U. S. Comp. St. 1901, p. 3450), which provides that (a) "In all cases of mutual debts or mutual credits between the estate of the bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed and paid. (b) A set-off or counterclaim shall not be allowed in favor of any debtor of the bankrupt which is not provable against the estate * * *" On behalf of the trustee it was contended that the defendant's expenditures in discharging the liens were not "provable" at the time of filing the petition, because the defendant's liability to such sub-contractors was merely contingent, and could not have been proved against the estate of the bankrupt when he made the payments. *Held,* that the payments could be set off against the amount due on the contract. *Wagner* v. *Burnham* (1909), — Pa. —, 73 Atl. 990.

The right of a surety to set off payments made upon his principal's debt is well recognized. *In re Dillon,* 100 Fed. 627. In the principal case it is observed that the defendant is in effect a statutory surety, and therefore his right to set off ought to be the same. Whether such a debt is "provable" within the meaning of § 68 supra is more difficult. In *Morgan* v. *Wordell,* 178

Mass. 350, 59 N. E. 1037, 55 L. R. A. 33, it was held that a claim could be set off if provable at the time it was attempted to be set off, though not strictly so at the time of filing the petition, the court holding that "provable" meant "provable *in nature*." This view was approved in *Norfolk & W. Ry.* v. *Graham,* 145 Fed. 809, 76 C. C. A. 385, 16 Am. B. R. 610, and derives considerable support from the fact that "provable in nature" was the language used in the Act of 1867. There seems to be no good reason why one discharging a mechanic's lien which may subsequently be enforced against him should not be held to possess the same equities as a surety discharging the obligation of his principal debtor. The one claim appears no more contingent than the other.

BILLS AND NOTES—USURY—WHEN NOTE IS VOID AS TO BOTH PRINCIPAL AND INTEREST.—Plaintiff brings suit to recover the amount of a promissory note. The note represented a loan of $225 made by the plaintiff to the maker and $25 interest charged thereon for the use of the $225 for eight months and ten days. The maker to secure the indorsement of his co-defendants, who were merchants trading under a firm name, made the instrument payable to the firm and it was indorsed as such to plaintiff. *Held,* (HAYES, J., dissenting), that under Ind. Ter St. 1899 § 3043 (Mansf. Dig. § 4732) the note was void as to both principal and interest and there could be no recovery on the same. *Sulphur Bank & Trust Co.* v. *Medlock et al.* (1909), — Okl. —, 105 Pac. 321.

This decision is interesting in showing the court's literal construction of the usury statute. The case, however, would be much more interesting if in the unofficial report the dissenting opinion of Judge HAYES had been given. The courts are not in harmony in construing usury statutes. The conflict between the state courts is due in a great measure to the wording of the various state statutes. Where a part of a contract is tainted with usury the whole contract is illegal. *Ormund* v. *Hobart,* 36 Minn. 306, 31 N. W. 213; *Brown* v. *Nevitt,* 27 Miss. 801. A usurious contract is not absolutely void but voidable only to the extent of the interest. *Masterson* v. *Grubbs,* 70 Ala. 406; *Dawson* v. *Burrus,* 73 Ala. 111. Usury avoids a contract only as to the excess above legal interest. *Farmers & Traders Bank* v. *Harrison,* 57 Mo. 503. The statute in the principal case expressly declared, "all contracts for greater rate of interest than 10 per cent per annum shall be void as to principal and interest." In *Claflin* v. *Boorum,* 122 N. Y. 385, Judge VANN says: "a note void in its inception for usury continues void forever, whatever its subsequent history may be." The principal case was correctly decided and from the express terms of the statute is amply sustained by reason and authority. See *Claflin* v. *Boorum,* supra; *Schlessinger* v. *Lehmaier,* 191 N. Y. 69.

BOUNDARIES—MEANDER LINE—RIPARIAN RIGHTS.—Plaintiff owned a tract of eighteen acres abutting upon the meandered line of Lake Cache, as shown by the government survey of 1846. He claimed title to an adjoining tract, which at the time the land was surveyed was within the meandered lines of the lake. Defendants claimed title to the same tract through a grant to Arkansas by the government of "all the unsurveyed land in the township